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February 16, 2004

Mr. Mark Friedrichs, PI-40  
Office of Policy and International Affairs  
U.S. Department of Energy  
Room 1E190, 1000 Independence Avenue, S.W.  
Washington, DC 20585

Dear Mr. Friedrichs:

I am writing to provide comments from the Northeast States for Coordinated Air Use Management (NESCAUM) on the Department's proposed revisions to its General Guidelines for the national Voluntary Greenhouse Gas Reporting Program, originally created under section 1605(b) of the Energy Policy Act of 1992. As stated in our comments of June 2002 when the revision was initiated, NESCAUM believes that a rigorous reporting program will provide businesses and other entities with important incentives to take action to reduce greenhouse gas (GHG) emissions. NESCAUM is currently facilitating a multi-state initiative to develop a regional GHG registry for at least ten Northeast states. In the course of this effort and previous work, our organization has devoted significant resources to assessing what policies and procedures are required for a rigorous, complete, and accurate GHG reporting system.

We commend the administration for recognizing that the original 1605(b) program did not provide an adequate basis for accurately measuring trends in national GHG emissions, and for seeking to upgrade the program. Toward that end, NESCAUM recommended a number of changes to the program in our June 2002 comments. Notably, we urged the Department to:

- Require reporting both at the facility and the corporate level to establish (and possibly to credit) emission reductions;
- Use mass emissions as the default reporting unit, supplemented by rate-based measurements for sectors with a single, identifiable output, such as electricity generation;
- Require third-party certification of all reports;
- Use established quantification protocols, such as the *Greenhouse Gas Protocol* developed by the World Resources Institute and the World Business Council for Sustainable Development (WRI/WBCSD); and
- Ensure transparency of reported data.

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While the revised guidelines take steps in the direction outlined above, they fall short of what is required to ensure that the 1605(b) program provides “a standardized, credible vehicle for reporting and recognizing progress,” the goal of these revisions as articulated by President Bush. In addition to these general aims, the agencies shepherding the process identified ten discrete goals for the revised guidelines. Though each of these goals may be individually laudable, they also create tensions that ultimately undermine the credibility of the program. For example, a program that aims to broadly “recognize progress” requires different information and reporting rigor than a program seeking to “provide credits for actions.” By trying to provide something for everyone, the revised guidelines provide too much flexibility, with the result that reported emissions are unlikely to be uniform, complete, or credible. Moreover, they are unlikely to adequately meet many of the discrete goals identified by the agencies.

One point of curiosity in the revised guidelines is the starting date of 2002 for registering (DOE draft guidelines, p. 24) GHG reductions. The encouragement historically utilized by the DOE to entice entities to register their early reduction activities was that these reductions could be accounted for and credit given to “good actors” - perhaps in the form of baseline protection credit. Under the current revisions, no such recognition is forthcoming to those who acted “in good faith” prior to 2002 and who voluntarily registered their reductions using the first version of 1605(b). The question is naturally asked why in the future any entity would voluntarily participate in a revised 1605(b) program, which from the start reneges on past assurances.

Our views on specific points are detailed below.

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#### **A. Definition of Reporting Entities**

Commendably, the revised guidelines require large emitters (those producing more than 10,000 tons CO<sub>2</sub> equivalent annually) to report on an entity-wide basis and encourage reporting entities to report at the highest meaningful level of aggregation. This shift away from project-based reporting represents one of the most notable improvements in the revised guidelines over the original 1605(b) program. However, the revised guidelines leave the definition of entity open to reporters. As the draft guidelines note, “This approach would permit a legally-distinct company, plant or activity to define itself as an entity, even if it is partially- or wholly-owned by another company . . . . Given the flexibility inherent in this definition, some companies and institutions could be all or part of a reporting entity at any one of several different levels,” although reported emissions would accrue only to the reporting entity and not to the parent company (DOE draft guidelines, p. 13)

In contrast, the WRI/WBCSD *Greenhouse Gas Protocol* calls for reporting at the corporate level and provides clear rules for defining corporate organizational boundaries. Similarly, Canada’s proposed national mandatory GHG reporting system calls for

reporting at the company (as well as facility) level.<sup>1</sup> NESCAUM urges the Department to adopt a stringent requirement for reporters to set organizational boundaries at the corporate level, for two reasons. First, emissions reports will be more meaningful to the public and to regulators if they are estimated at the corporate level than if they are provided for a number of corporate sub-units, especially reports from large diversified companies. Second, the flexibility to define reporting entities at various levels may invite some entities to set organizational boundaries so that high-emitting units are treated separately, in order to improve perceptions of overall corporate performance.

In addition to corporate-wide reporting, NESCAUM recommends that participants in the federal program should provide facility-level data, as proposed for the Canadian national mandatory reporting program. This information will enable state and local officials and other stakeholders to track emissions from activities in their states or communities. In the instances when states opt to regulate greenhouse gas emissions (as several Northeast states already have done), these controls will typically be imposed at the facility level. In states that do not regulate GHG emissions, facility-level data will nonetheless have many uses, such as improving state GHG inventories and identifying the most promising opportunities for measures to increase the efficiency of energy use.

A second major flaw in the proposed guidelines with respect to setting organizational boundaries is the lack of specificity with respect to how reporting entities should treat units that they do not wholly own. The guidelines state that reporting entities must define their operations and facilities to include all wholly-owned and -operated units, but makes inclusion of units that are partially owned, leased, or operated by the reporting entity optional, stipulating only that entities must coordinate with other entities with which they share ownership to ensure that double-counting does not occur. This standard is weak and leaves the door open to over- or under-reporting of emissions from partially-owned units. NESCAUM urges the Department instead to adopt the WRI/WBCSD *Greenhouse Gas Protocol*'s guidelines for including partially owned operations, franchises, and leases based on an equity share approach or a financial control approach, and for using scopes to avoid double-counting.

## **B. Reporting Requirements**

While mandatory reporting is not within the scope of the Energy Policy Act, NESCAUM supports federal legislation mandating GHG emissions reporting. Mandatory reporting would discourage selective reporting and leakage. However, in the absence of such legislation, NESCAUM urges the Department to design the registry to support a future transition to mandatory reporting.

The draft guidelines create a two-tier set of requirements for reporting entities: large emitters (those with average annual emissions greater than 10,000 tons CO<sub>2</sub> equivalent) must report entity-wide, while emitters with average annual emissions below this

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<sup>1</sup> Natural Resources Canada and Environment Canada, *A Domestic System for Mandatory Reporting of Greenhouse Gas (GHG) Emissions in Canada*, Discussion Paper, October 7, 2003, p. 11; online at [http://www.ec.gc.ca/pdb/ghg/2003WorkShop/2003pdf/discussion\\_e.pdf](http://www.ec.gc.ca/pdb/ghg/2003WorkShop/2003pdf/discussion_e.pdf).

threshold must provide a complete assessment of annual emissions and sequestration associated with the type of activity(ies) being reported, but not a full entity-wide report. This division apparently seeks to broaden participation in the reporting program by allowing smaller reporters to focus on projects rather than entity-wide emissions.

However, NESCAUM sees no basis for creating a two-tier reporting system with different sets of rules for different sources. Since reporters with emissions under the 10,000 ton threshold are required to certify that the changes they report “were not caused by actions likely to cause increases in emissions elsewhere within the entity’s operations” (DOE draft guidelines, p. 19), they will have to perform some assessment of their entity-wide emissions in any case. Additionally, this provision may invite some reporting entities to subdivide their organizations into units with emissions below the threshold in order to take advantage of the less rigorous requirements for small emitters – particularly since, as discussed in section A above, the guidelines leave the definition of organizational boundaries up to the reporter. Instead, NESCAUM recommends that all participants should have to report entity-wide and should be held to uniform reporting standards.

NESCAUM also questions the wisdom of allowing the “reporting” (as opposed to the registration) of “any emissions or any emissions reductions.” (§ 300.1(b)(2)). Such unbounded data undermines the identified goals of the program by making it less uniform and rigorous. It creates serious questions about how such reporting should be recognized. It also undermines the program’s credibility: a company could promote itself by stating that they “report” to the federal greenhouse gas program, a technical distinction likely lost on the public. Because “reporting” provides little benefit, but raises significant concerns, it should be dropped from the revised program.

### **C. Reporting Units**

The draft guidelines recommend using emissions intensity indicators as the basis for determining emission reductions, although other methods can also be used. NESCAUM believes that intensity metrics should not be the default reporting units, for several reasons:

- Emissions intensity can decrease while absolute emissions increase, so emissions intensity is not a sufficient indicator of progress in curbing absolute GHG emissions. All of the NESCAUM member states have made public commitments to reducing their absolute GHG emissions, and state officials need mass-based emissions information to assess progress toward their goals.
- As the guidelines note, some industries have clear indicators of output that can be used to measure GHG emissions intensity (such as kilowatt hours for electric power generation), but others do not, especially if their output includes a wide range of products and/or production processes. The Department states that in its forthcoming technical guidelines, it “is likely to give most reporters the flexibility to adopt the best indicators for their particular circumstances.” (DOE draft guidelines, p. 29). However, there are many potential intensity metrics, including

GHG emissions per unit of output or dollar of revenue, as well as relative performance indices that set a company's GHG intensity for a base year and then compare succeeding years to the base value. This range of indicators makes it likely that without specific guidance, it will be difficult for the public to compare emissions reports across industries or aggregate them into meaningful analyses of overall progress toward GHG reduction targets – reducing or eliminating these reports' value for any purpose other than public recognition.

NESCAUM again recommends that mass-based emissions be the default reporting unit, supplemented at the reporter's discretion with thoroughly documented intensity metrics. DOE should develop detailed guidance for use of GHG intensity metrics in specific sectors, based on existing work in this area such as the WRI/WBCSD *Greenhouse Gas Protocol* and the United Nations Environment Programme's GHG Indicator.

#### **D. Aggregation of Reported Emissions and Reductions**

Under the proposed general guidelines, reporting entities are instructed to calculate their net GHG emission reductions by summing their reported emissions, avoided emissions, sequestration, and offsets. NESCAUM supports reporting of offsets and sequestration projects. However, quantification methodologies in both of these areas are still evolving and involve many complex considerations, such as estimating the permanence of carbon sequestration in forestry projects. Similarly, several NESCAUM member states filed comments with DOE in June 2002 on the difficulty of estimating avoided GHG emissions resulting from increased output by low-emitting electric power sources.<sup>2</sup>

Given the many contentious issues surrounding these areas, NESCAUM believes that offsets, sequestration, and avoided emissions should be reported separately rather than netted with reported emissions. Reporting these categories separately is most likely to preserve and protect their value as GHG reductions. We recommend that the Department develop detailed guidance for estimating emissions in each of these areas, based on sources such as the WRI/WBCSD *Greenhouse Gas Protocol* project reporting module (currently being finalized) and the Good Practice Guidance for Land Use, Land-Use Change, and Forestry released by the Intergovernmental Panel on Climate Change in December 2003.

#### **E. Additionality Requirements**

In our June 2002 comments, NESCAUM observed that to merit any type of crediting, reductions reported to the 1605(b) program should be subject to vigorous requirements that ensured the reductions were real, surplus, quantifiable, and verifiable. We are aware that DOE has determined that it does not have explicit legal authority, based on the current statute, to provide credits for early action to reduce GHG emissions. Many

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<sup>2</sup>See comments from Nancy Seidman (Massachusetts Department of Environmental Protection) and Mike Winka (New Jersey Department of Environmental Protection) at <https://ostiweb.osti.gov/pighg/ghga0202.idc>.

participants in the 1605(b) program remain advocates of such credits, however, while the draft guidelines make no mention of any requirement for participants to show that reported reductions are surplus (i.e., “additional”) to actions that they would have been required to take in the absence of the 1605(b) program. While additionality is a thorny topic, NESCAUM recommends that at a minimum, participants in the 1605(b) program should have to demonstrate that emission reductions are additional to any existing regulatory or legal requirements in order to register them. On the general issue of awarding credits for emission reductions, we reiterate our comment in 2002 that we are skeptical of the ability to use 1605(b) to guarantee any future emission credits and believe that such a claim should not be made without specific legislative authority.

#### **F. Reporting Thresholds and Exclusions**

The draft guidelines would allow reporters to exclude emissions from multiple sources and multiple gases totaling up to 3% of their total emissions inventories or 10,000 tons of CO<sub>2</sub> equivalent, whichever amount is smaller. However, as many GHG emissions experts have noted, sources must measure all of their emissions in order to determine whether emissions of individual gases fall below this *de minimis* threshold. Since it requires minimal incremental effort to report all emissions once this analysis is carried out, and the analysis involved in conducting a rigorous and comprehensive GHG inventory may provide sources with new insights into ways to reduce their emissions and improve their energy efficiency, it makes little sense to exclude *any* emissions.

However, we recognize that large companies with many business units may opt not to report if they are required to quantify all entity-wide emissions, and so would support the option of excluding a small percentage (no more than 5% of a reporter’s total emissions of CO<sub>2</sub> equivalent across all sources). As the guidelines note, it is difficult to set a fair and appropriate exclusion threshold given the diversity of sources in the United States, and this is particularly true when the threshold is set as an absolute number of tons. Setting a threshold high enough to be significant to major emitters could lead to the exclusion of millions of tons of GHG emissions from the registry. Therefore, we recommend that if a *de minimis* threshold for reporters is included, it should be set only as a percentage of total entity emissions.

#### **G. Reporting Requirements for the Inclusion of Offsets**

The Department requested comments on the appropriate level of information for inclusion of offset projects by third parties (DOE draft guidelines, p. 32). NESCAUM’s experience in addressing the offsets issue strongly suggests that only the most transparent program will survive the scrutiny necessary to give offsets tangible value. To this end, the Department should require separate disclosure of any offsets claimed. The disclosure should conform to the entity-wide reporting requirements to independently ensure credibility.

## **H. Verification of Emission Reports**

The draft guidelines take a step forward from the current 1605(b) program by encouraging participants to obtain independent verification of all reports. NESCAUM commends this step but believes that third-party certification should be required in order to maximize and preserve the future value of the registered reductions. Major corporations that have taken a lead in measuring and reducing their GHG emissions, such as BP and Waste Management, have asserted publicly that certification adds credibility to the information in their reports and increases their value in GHG emissions markets. Moreover, the certification process is likely to help some reporters develop greater expertise in GHG measurement and identify areas in which they can reduce their emissions and improve operations. NESCAUM further recommends that the Department add information to the draft guidelines specifying minimum qualifications required for third-party verifiers and their reports, in order to ensure that the information produced is as consistent and reliable as possible, and will ultimately be viable in any international market-based cap and trade regime.

## **I. Duration of Reporting**

The Department requested comments on whether an entity would be able to cease reporting and still remain on the registry (DOE draft guidelines, p. 25). This would allow an entity that has registered reductions to exit the registry once its emissions increase and yet still maintain recognition for the same level of reductions. Such a fair weather system substantially undermines the credibility of the program and should not be allowed. Rather, entities should only be allowed to take credit for their currently aggregated activities.

## **J. Calculation tools**

While the Proposed Rule requires reporting entities to harmonize their measurement and calculation methods with the DOE Technical Guidelines, we recommend that the reporting system provide and require the use of accurate, standardized calculation tools and include an emissions factor database. The WRI/WBCSD *Greenhouse Gas Protocol* provides a number of such resources, and we recommend that DOE use and build on these tools. If reporting entities wish to develop their own calculation tools, they should be required to seek approval for their alternative tools and disclose their calculation methodologies for review.

## **K. Confidentiality of Reported Information**

Many organizations that filed comments in June 2002, including NESCAUM, noted the importance of ensuring that information reported to the 1605(b) program be fully transparent and accessible to the public. The draft guidelines make no mention of the issue of confidentiality, although section 1605(b) as currently written provides for protection of data that meets civil law standards of business confidentiality, in contrast to

statutes such as the Clean Air Act that exempt “emissions data” from such protections.<sup>3</sup> We reiterate our recommendation that reporting entities should be required to waive any claim of confidentiality so that state officials, GHG market participants, and others can assess the credibility of emissions reports.

#### **L. Revision Process Concerns**

NESCAUM shares the concerns that a number of other stakeholders have raised with respect to the timing and sequence of the Department’s process for revising the 1605(b) program. Notably, the draft general guidelines discussed in this submission refer in many key areas to technical reporting guidelines that have not yet been issued. This piecemeal review process makes it difficult to provide a cohesive assessment of the revised program and to identify potential issues that may undercut the usefulness of the new reporting process. NESCAUM recommends that stakeholders should have the opportunity to amend their comments on all segments of the revised program by a specified end date that will offer the opportunity to review all components in relation to each other, rather than filing comments sequentially on isolated program elements.

#### **M. Conclusions**

For the last six years, NESCAUM has worked with its member states and interested stakeholders to tackle issues surrounding crediting GHG reductions in general, and developing credible registries in particular. The biggest lesson that we have learned is that a registry requires clearly defined, discrete policy goals. It cannot cater to every need and idea. The revised guidelines, in trying to satisfy all stakeholders under a single approach, will fail to create a system that will adequately address any of the substantive policy goals identified by the Department and other agencies. Rather, the broad flexibility inherent in such an approach results in a program that is neither uniform, complete, nor credible.

NESCAUM suggests that the Department define its goals more clearly and create a program that addresses each goal separately. Towards this end, NESCAUM suggests a model closer to WRI/WBCSD’s, which specifically addressed entity-wide reporting with one protocol and project-based/offset reporting with another protocol. This approach clarifies the goals sought by the Department and the benefits to be achieved by participants. It assures that the information collected is suitable to meet these goals and provide the benefits. In short, it will allow the Department to substantively deliver on the President’s stated aims to provide “a standardized, credible vehicle for reporting and recognizing progress.”

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<sup>3</sup> See comments from David Doniger, et al. at <https://ostiweb.osti.gov/pighg/ghga0202.idc>.



We hope that these comments will provide constructive assistance and help to correct the flaws in the existing 1605(b) program as the Department refines its draft reporting guidelines. We look forward to working with you to advance GHG reporting in the United States in the coming months.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth A. Colburn".

Kenneth A. Colburn